HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT PETITION No. 20925 of 1994

Between:

M/s K.C.P.Sugar and Industries
Corporation, Vuyyuru.

…Petitioner

AND

Secretary to Government, Revenue (Excise)
Department, Hyderabad and others

…Respondents

Counsel for the petitioner: Sri C.Gunaranjan for
Sri C.Kodandaram

Counsel for Respondents: Government Pleader for
Prohibition and Excise.

Dated: 13-9-2006

ORDER:

Per G.S.Singhvi, CJ

This petition is an example of litigious perseverance, which, at times, help the litigant in avoiding payment of statutory dues. The petitioner, who is engaged in manufacture of Rectified Spirit, successfully used the process of the court frustrating the efforts made by the Excise and Prohibition Department to recover the establishment charges in accordance with the Andhra Pradesh Distillery Rules, 1970 (for short 'the 1970 Rules'), now has prayed for quashing demand of the Department for payment of Rs.12,39,606-25 ps towards penal interest on the establishment charges for the period from August, 1968 to November, 1987.

The facts:

The petitioner was granted D-2 licence in 1963 for establishing distillery for manufacture of Rectified Spirit. By an amendment made in the 1970 Rules vide G.O.Ms.No.201
Revenue (E) Department dated 24-1-1978, Rule 14 of the 1970 Rules was amended with retrospective effect from 30-8-1968 and the salaries and allowances of the Excise staff posted at the distillery for the enforcement of the conditions of the licence and the provisions of the rules were made part of consideration for grant of privilege of distillation of spirit. The petitioner questioned the *vires* of amended Rule 14 in Writ Petition No. 2287 of 1978. The writ petition was dismissed on 18-1-1979. Writ Appeal No.42 of 1979 filed by the petitioner against order of the learned Single Judge was dismissed by the Division Bench on 29-10-1994
along with a batch of other similar appeals and the petition for Special

Leave to Appeal was dismissed by the Supreme Court in view of an earlier judgment in **Government of Andhra Pradesh v. Anabeshahi Wine and Distilleries Pvt. Ltd**[1].

During the pendency of the litigation before this Court and the Supreme Court, the petitioner did not pay the amount which became payable in terms of Rule 14 of the 1970 Rules, but after dismissal of the Special Leave Petition it deposited a sum of Rs.6,28,218/- in Sub-Treasury, Vuyyuru.

As a sequel to dismissal of the Special Leave Petition, the departmental authorities initiated action for levy of penal interest in accordance with the provisions contained in the Andhra Pradesh Excise (Levy of Interest on Government dues) Rules, 1982. For this purpose, demand notice dated 1-7-1994 was issued by Assistant Commissioner of Excise, Distilleries, Vijayawada, whereby the petitioner was called upon to pay a sum of Rs.12,39,606-29 towards the penal interest for the period from July, 1972 at the rate of 6%, 15% and 18%. A statement showing the calculation of interest was also annexed with the demand notice.

The petitioner has challenged the demand of penal interest mainly on the ground that the department cannot create such demand after a long time gap of 22 years calculated with reference to the date on which the establishment charges became payable in terms of amended Rule 14 of the 1970 Rules.

In the counter-affidavit filed by Sri M.Tukaram, the then Director of Distilleries and Breweries, Andhra Pradesh, it has been averred that as a consequence of non-payment of establishment charges, the petitioner became liable to pay penal interest in terms of the 1982 Rules which were framed by the Government in exercise of its power under Section 65 of the Andhra Pradesh Excise Act, 1968.

At the commencement of the arguments, learned counsel for the petitioner fairly stated that issue raised in this petition has already been considered and answered in negative by the Division Bench in Writ Petition No. 20918 of 1994 decided on
3-9-1997.

A perusal of the aforementioned order shows that after making brief reference to Rule 3 of the 1982 Rules, the Division Bench negatived challenge to the demand of penal interest by recording the following observations:

> "We have gone through the rules. Rule-3 of the A.P. Excise (Levy of Interest on Government dues) Rules, 1982 provide that the arrears of moneys recoverable under section 65 of the Act shall bear interest at the rate of 18% per annum. Thus, the Government has power to levy interest on arrears to be recovered. Therefore, we do not see any force in the contention of the learned counsel for the petitioner that the Government has no power to levy penal interest and demand the same."

In view of the order passed by the coordinate Bench, which is based on the interpretation of plain language of Rule 3 of the 1982 Rules, we do not find any justification to entertain the petitioner's prayer for invalidation of the impugned demand.

We are further of the view that even if there was no rule like Rule 3 of 1982 Rules, the respondents could have legitimately raised demand of penal interest, because the petitioner had avoided payment of establishment charges on the strength of the interim order passed by the High Court. In **M/s Style (Dress land) v. Union Territory, Chandigarh**[2], the Supreme Court considered some what a similar issue arisen out of an order passed by Punjab and Haryana High

Court which had directed the appellant to pay interest at the rate of 18% on the arrears of enhanced rent, the payment of which was stayed in the litigation instituted by the latter. While approving the view of the High Court that a person who successfully avoids payment of public dues can be compelled to pay interest, the Supreme Court observed:

> "The High Court was, therefore, not wrong in directing the payment of interest on the amount of arrears of rent for the period when the stay order was obtained till the period the writ petitions were dismissed. We, however, feel that awarding of interest @ 18% per annum from the aforesaid period was on the excessive side. The respondent-authority could not be equated with private commercial institutions and conferred with an amount of compensation in the form of interest which, in the judicial parlance, may amount to penalty, despite the fact that the persons found to have jeopardized the process of law were rightly held liable to compensate the respondent-authority by way of interest. In our opinion 15% per annum interest for the aforesaid period would have been just and proper. We, however, agree with the findings of the High Court that the respondents are free to charge appropriate interest on the amount of arrears of rent between 1-3-1992 to the date when the stay orders were passed by the High Court. We are sure that in determining such rate of interest the respondent-authority would act fairly and justly."

In view of the above discussion, we hold that the petitioner's challenge to the demand of penal interest is legally untenable and the writ petition is liable to be dismissed. Ordered accordingly.

While dismissing the writ petition, we make it clear that if the petitioner has not deposited the amount of penal interest so far, then it shall do so within a period of one month from today, failing which the department shall be free to adopt all legally permissible methods for recovery of the public dues.

G.S.SINGHVI, CJ

13th September, 2006

G.V.SEETHAPATHY, J

bsc

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[1] (1988) 2 SCC 25

[2] AIR 1999 SC 3678